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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/896,439	06/29/2001	Kenneth P Wilson	1082-143	8247

7590 09/09/2004

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EXAMINER	
MUSSER, BARBARA J	

ART UNIT	PAPER NUMBER
1733	

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/896,439	WILSON, KENNETH P	
	Examiner	Art Unit	
	Barbara J. Musser	1733	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *see attachment*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-20*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Continuation of 3. Applicant's reply has overcome the following rejection(s): the rejection of claim 7 over Binning et al., the admitted prior art, and Lambdin, Jr..

ATTACHMENT

1. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Binning et al. clearly states that aromatic polyamides are preferable to rayon for fibers which can be used for rocket nozzle exhausts.(Col. 3, ll. 22-27) While it does not disclose why it prefers polyaramids to rayon, that fact that it does is clear motivation to use a polyaramid rather than rayon. Since the reference teaches one is preferable to the other, this is not a conclusory statement on the part of the examiner but is an actual teaching of the reference.

Regarding applicant's argument that the fact that rayon is no longer available does not provide the motivation to combine, it provides a motivation to look for an alternative to rayon such as a reference such as Binning et al. which discloses that polyaramid is preferable to rayon in the same types of products as made by the admitted prior art.

Regarding applicant's argument that there is no suggestion for using a specific denier fiber reinforcement in the composites, since Binning et al. is silent as to the

denier of the fibers, one in the art would look to other references making the same products to determine the conventional denier used. Lambdin et al. discloses that 2.3 denier fiber has been used to form composites used in rocket nozzle exhausts previously. It would have been obvious to one of ordinary skill in the art at the time the invention was made to look to references forming the same products to determine the conventional fiber deniers using a reference such as Lambdin and to use those denier fibers in the admitted prior art and Binning et al. since they are conventional. While Lambdin is not directed to polyaramid fibers, it is directed to making the same product as applicant and therefore one in the art would expect the denier used to be conventional particularly since Ogawa and Ezekiel disclose that fiber deniers within applicant's range are conventional for this type or product.

Regarding applicant's argument that Ogawa and Ezekiel are not part of the rejection, the references are cited as evidence that fiber deniers within applicant's range are conventional for making the same type of product as applicant.

Regarding applicant's argument that there is no reason to use NOMEX in the combination of the admitted prior art, Binning et al., and Lambdin Jr., Binning et al. discloses the use of either meta or para phenylene with a variety of pendant groups, the first of which is hydrogen. When hydrogen is used as the pendant group, as clearly desired by the reference since it is the first choice listed, the phenylene formed is either NOMEX(meta) or KEVLAR(para). Therefore Binning et al. does not just teach phenylenes which are not ortho, it also teaches phenylenes which have hydrogen pendant groups. Therefore the reference effectively teaches the use of either NOMEX

or KEVLAR but does not suggest the use of one over the other. Hirsch is cited to show why one would use NOMEX in particular instead of KEVLAR.

It is noted that poly arylaramid, polyaramid, and aromatic polyamide are the same thing as the dictionary defines an aramid as an aromatic polyamide.

Regarding applicant's argument that Binning et al. does not disclose meta-polyaramid, there are only three positional choices- para, meta, and ortho. Since the reference discloses the aramids are not ortho, the only remaining choices are para and meta.

Regarding applicant's argument that Hirsch teaches away from the invention since it discloses partially carbonizing the fibers, Hirsch is used to show that the use of NOMEX is known in the carbonized fiber art. Binning already discloses the genus of which NOMEX is a species. This genus is relatively small, and NOMEX and KEVLAR are the simplest elements of it.

Regarding the rejection of claim 7 in paragraph 4 over Binning et al., the admitted prior art, and Lambdin Jr., examiner agrees that the claim should not have been included in that rejection but is properly grouped in paragraph 5 of the final rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara J. Musser whose telephone number is (571) 272-1222. The examiner can normally be reached on Monday-Thursday; alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571)-272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BJM

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